

Circuit Court for Prince George's County

City or County

CIVIL - NON-DOMESTIC CASE INFORMATION REPORT

DIRECTIONS:

Plaintiff: This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111(a). A copy must be included for each defendant to be served.

Defendant: You must file an Information Report as required by Rule 2-323(h).

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS AN ANSWER OR RESPONSE.

FORM FILED BY: ☒ PLAINTIFF ☐ DEFENDANT CASE NUMBER _____ (Clerk to insert)

CASE NAME: David R. Embody, et al. vs. Town of Riverdale Park, et al.
Plaintiff Defendant

JURY DEMAND: ☒ Yes ☐ No Anticipated length of trial: _____ hours or 3 days

RELATED CASE PENDING? ☐ Yes ☒ No If yes, Case #(s), if known: _____

Special Requirements? ☐ Interpreter (Please attach Form CC-DC 41)
☐ ADA accommodation (Please attach Form CC-DC 49)

**NATURE OF ACTION
(CHECK ONE BOX)**

DAMAGES/RELIEF

TORTS		LABOR		A. TORTS	
<input type="checkbox"/> Motor Tort	<input type="checkbox"/> Workers' Comp.	Actual Damages		<input type="checkbox"/> Medical Bills	
<input type="checkbox"/> Premises Liability	<input type="checkbox"/> Wrongful Discharge	<input type="checkbox"/> Under \$7,500		\$ _____	
<input type="checkbox"/> Assault & Battery	<input type="checkbox"/> EEO	<input type="checkbox"/> \$7,500 - \$50,000		\$ _____	
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Other _____	<input type="checkbox"/> \$50,000 - \$100,000		<input type="checkbox"/> Property Damages	\$ 5,000,000.00
<input type="checkbox"/> Professional Malpractice	CONTRACTS		<input checked="" type="checkbox"/> Over \$100,000	<input type="checkbox"/> Wage Loss	\$ _____
<input type="checkbox"/> Wrongful Death	<input type="checkbox"/> Insurance				
<input type="checkbox"/> Business & Commercial	<input type="checkbox"/> Confessed Judgment				
<input type="checkbox"/> Libel & Slander	<input type="checkbox"/> Other _____				
<input type="checkbox"/> False Arrest/Imprisonment	REAL PROPERTY		B. CONTRACTS		C. NONMONETARY
<input type="checkbox"/> Nuisance	<input type="checkbox"/> Judicial Sale	<input type="checkbox"/> Under \$10,000		<input checked="" type="checkbox"/> Declaratory Judgment	
<input type="checkbox"/> Toxic Torts	<input type="checkbox"/> Condemnation	<input type="checkbox"/> \$10,000 - \$20,000		<input checked="" type="checkbox"/> Injunction	
<input checked="" type="checkbox"/> Fraud	<input type="checkbox"/> Landlord Tenant	<input type="checkbox"/> Over \$20,000		<input type="checkbox"/> Other	
<input type="checkbox"/> Malicious Prosecution	<input type="checkbox"/> Other _____				
<input type="checkbox"/> Lead Paint	OTHER				
<input type="checkbox"/> Asbestos	<input checked="" type="checkbox"/> Civil Rights				
<input checked="" type="checkbox"/> Other	<input type="checkbox"/> Environmental				
<u>Conversion</u>	<input type="checkbox"/> ADA				
	<input type="checkbox"/> Other _____				

ALTERNATIVE DISPUTE RESOLUTION INFORMATION

Is this case appropriate for referral to an ADR process under Md. Rule 17-101? (Check all that apply)

A. Mediation ☒ Yes ☐ No C. Settlement Conference ☒ Yes ☐ No
B. Arbitration ☐ Yes ☒ No D. Neutral Evaluation ☐ Yes ☒ No

TRACK REQUEST

With the exception of Baltimore County and Baltimore City, please fill in the estimated LENGTH OF TRIAL.

THIS CASE WILL THEN BE TRACKED ACCORDINGLY.

☐ 1/2 day of trial or less ☒ 3 days of trial time
☐ 1 day of trial time ☐ More than 3 days of trial time
☐ 2 days of trial time

PLEASE SEE PAGE TWO OF THIS FORM FOR INSTRUCTIONS PERTAINING TO THE BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM AND COMPLEX SCIENCE AND/OR MEDICAL CASE MANAGEMENT PROGRAM (ASTAR), AS WELL AS ADDITIONAL INSTRUCTIONS IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE CITY, PRINCE GEORGE'S COUNTY, OR BALTIMORE COUNTY.

Date August 6, 2012

Signature _____

BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

For all jurisdictions, if Business and Technology track designation under Md. Rule 16-205 is requested, attach a duplicate copy of complaint and check one of the tracks below.

☐ **Expedited**
Trial within 7 months
of Filing

☐ **Standard**
Trial within 18 months
of Filing

☐ EMERGENCY RELIEF REQUESTED _____

Signature _____

Date _____

COMPLEX SCIENCE AND/OR MEDICAL CASE MANAGEMENT PROGRAM (ASTAR)

*FOR PURPOSES OF POSSIBLE SPECIAL ASSIGNMENT TO AN ASTAR RESOURCE JUDGE under Md. Rule 16-202.
Please check the applicable box below and attach a duplicate copy of your complaint.*

☐ Expedited - Trial within 7 months of Filing

☐ Standard - Trial within 18 months of Filing

IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE CITY, PRINCE GEORGE'S COUNTY, OR BALTIMORE COUNTY PLEASE FILL OUT THE APPROPRIATE BOX BELOW.

CIRCUIT COURT FOR BALTIMORE CITY (CHECK ONLY ONE)

- ☐ Expedited Trial 60 to 120 days from notice. Non-jury matters.
- ☐ Standard-Short Trial 210 days.
- ☐ Standard Trial 360 days.
- ☐ Lead Paint Fill in: Birth Date of youngest plaintiff _____.
- ☐ Asbestos Events and deadlines set by individual judge.
- ☐ Protracted Cases Complex cases designated by the Administrative Judge.

CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

To assist the Court in determining the appropriate Track for this case, check one of the boxes below. This information is not an admission and may not be used for any purpose other than Track Assignment.

- ☐ Liability is conceded.
- ☐ Liability is not conceded, but is not seriously in dispute.
- ☒ Liability is seriously in dispute.

CIRCUIT COURT FOR BALTIMORE COUNTY

☐ Expedited
(Trial Date-90 days)

Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus.

☐ Standard
(Trial Date-240 days)

Condemnation, Confessed Judgments (Vacated), Contract, Employment Related Cases, Fraud and Misrepresentation, International Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases.

☐ Extended Standard
(Trial Date-345 days)

Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or Personal Injury Cases (medical expenses and wage loss of \$100,000, expert and out-of-state witnesses (parties), and trial of five or more days), State Insolvency.

☐ Complex
(Trial Date-450 days)

Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product Liabilities, Other Complex Cases.

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

DAVID RICHARD EMBODY
5025 Edgewood Road
College Park, Maryland 20740

And

STEPHANIE MCKISSIC
2856 Brunston Castle Lane
Waldorf, Maryland 20601

Plaintiffs

v.

CASE NO. CA12-23121

TOWN OF RIVERDALE PARK
Serve: Vernon Archer, Mayor
Also Serve: Sara Imhulse, Town
Administrator
5008 Queensbury Road
Riverdale Park, Maryland 20737

And

SIGMA SPACE CORPORATION
Serve: J. Marcos Sirota, Resident Agent
9801 Greenbelt Road, Suite 105
Greenbelt, Maryland 20706

And

OPTOTRAFFIC, LLC
Serve: George S. Lawler, Esq.
One W. Pennsylvania Avenue
Towson, Maryland 21204

Defendants

Clerk of the
Court
2012 APR -6 PM 9:43
PR GEO CO MD #70

CLASS ACTION COMPLAINT AND JURY DEMAND

COME NOW Plaintiffs, David Embody and Stephanie McKissic, for themselves and all those similarly situated, by and through their undersigned attorney, and files this Class Action Complaint against Defendant Town of Riverdale Park ("Riverdale Park"), Defendant Sigma Space Corporation, and Optotraffic, LLC and states as follows:

1. David Embody and Stephanie McKissic are taxpayers of the state of Maryland who regularly uses the roads of Maryland including, but not limited to, the roads located within Riverdale Park and received speed camera system citations from Riverdale Park during the relevant time period.

2. Defendant Riverdale Park is a municipality in Prince George's County incorporated in 1920 as the Town of Riverdale, and which legally changed its name to Town of Riverdale Park effective September 7, 1998. Defendant Sigma Space Corporation and its division, Optotraffic, LLC ("Optotraffic") are Maryland Corporations whose primary offices are 9801 Greenbelt Road, Suite 105, Greenbelt, Maryland 20706.

THE STATUTE AND THE CONTRACTS

3. In 2006, the state of Maryland enacted Md. Code Ann. *Transportation* § 21-809 (the "Statute"), granting Montgomery County authority to implement photographic speed-monitoring systems and to issue civil citations imposing fines of \$40.00 per citation. The 2006 version of the Statute, as amended through September 30, 2009, read in relevant part as follows:

"(d) Citation. -- (1) Subject to the provisions of paragraphs (2) through (4) of this subsection, the local police department shall mail to the owner, liable under subsection (c) of this section, a citation that shall include:
... (viii) A signed statement by **a duly authorized agent of the local police department** that, based on inspection of recorded images, the motor vehicle was being operated in violation of this subtitle;" [Emphasis Added].

4. Effective October 1, 2009, the Maryland General Assembly amended the Statute such that jurisdictions statewide could institute speed monitoring systems. Further, the Statute as revised effective October 1, 2009, read in relevant part as follows:

“(d) Citation. -- (1) Subject to the provisions of paragraphs (2) through (4) of this subsection, an agency shall mail to an owner liable under subsection (c) of this section a citation that shall include: . . . (viii) A signed statement by **a duly authorized law enforcement officer** employed by or under contract with an agency that, based on inspection of recorded images, the motor vehicle was being operated in violation of this subtitle;” [Emphasis Added].

5. The Maryland Code defines a law enforcement officer as:

“(1) "Law enforcement officer" means an individual who: (i) in an official capacity is authorized by law to make arrests; and (ii) is a member of one of the following law enforcement agencies: . . . 6. the police department, bureau, or force of a municipal corporation;” Md. Code Ann. *Public Safety* § 3-101.

6. On information and belief, beginning October 1, 2009 Defendant Riverdale Park allowed non-law enforcement officers including, but not limited to, Karen Coker nee Arias and Tracey Perrin, the Records Manager, to log in to the citation system, under the name of a law enforcement officer, to authorize citations that resulted in citations being issued that contained the sworn statement of a law enforcement officer. See May 19, 2010 email chain as **Exhibit 1**.

7. Between February 17, 2010 and April 3, 2010, Corporal Clayton Alford (“Cpl. Alford”), a law enforcement officer of the Riverdale Park Police Department, was on leave from the Riverdale Park Police Department.

8. Between February 17, 2010 and April 3, 2010, Cpl. Alford did not personally authorize any citations.

9. On information and belief, between February 17, 2010 and April 3, 2010, Defendant Riverdale Park allowed non-law enforcement officers, including but not limited to Karen Coker nee Arias and Tracey Perrin to log in to the citation system under the name of Cpl. Alford, and

authorize citations which resulted in citations being issued that falsely contained the following sworn statement of Cpl. Alford: "CERTIFICATE: I am an agent or employee of Riverdale Park Police Department. Based on inspection of the recorded images shown above, the motor vehicle was operated in violation of TA § 21-809, as evidenced by the above images. Sworn to or Affirmed By: PFC Alford, ID #100." See February 17, 2010 citation as **Exhibit 2**.

10. By allowing non-law enforcement officers to authorize speed camera citations, Defendant Riverdale Park violated the Statute's requirement that citations be approved by a Law Enforcement Officer.

11. By allowing someone other than Cpl. Alford to log in under the name of Cpl. Alford, or another law enforcement officer, to authorize speed camera citations in the name of Cpl. Alford or that other law enforcement officer, Defendant Riverdale Park violated the Statute's requirement that those citations be approved by a law enforcement officer after that law enforcement officer's inspection of recorded images and determination that the motor vehicle was being operated in violation of the Statute.

12. On November 3, 2009, Defendant Riverdale Park signed a contract with Optotraffic, a division of Sigma Space Corporation, to operate Defendant's System. On information and belief, Optotraffic installed and operated a system with equipment which took photos of vehicles allegedly violating the Statute. However, Optotraffic's equipment did not comply with Maryland law which required that the equipment produce photos which were evidence of a speeding violation of the Statute. Optotraffic's photos are not evidence of a violation. Defendant Optotraffic was aware that Defendant Riverdale Park was allowing non-law enforcement officers to authorize citations as Angenette Criner, an Optotraffic employee and

liaison to Defendant Riverdale Park, was copied on emails from discussing Karen Coker nee Arias and Tracey Perrin's approval of citations. See January 10, 2011 email as **Exhibit 3**.

13. Effective October 1, 2009, the Statute read in relevant part as follows:

“(d) Citation. -- (1) Subject to the provisions of paragraphs (2) through (4) of this subsection, an agency shall mail to an owner liable under subsection (c) of this section a citation that shall include: . . . (viii) A signed statement by a duly authorized law enforcement officer employed by or under contract with an agency that, **based on inspection of recorded images, the motor vehicle was being operated in violation of this subtitle;**” [Emphasis Added].

14. On January 27, 2012, in *State v. Eastover Auto Supply*, Case No. 27440, John O'Connor, as agent of Optotrafic testified, under oath, that “[a]s an accident reconstructionist, we do not use photos that are taken at two independent times to estimate speed? Why? Because it's inaccurate. You can't do it...The photo is actually just secondary evidence that the vehicle was there and it was in motion, that it was there at the time of the occurrence. The speed is actually done by time distance by one LIDAR device that has two beams that's pointed down at the road. The speed of the vehicle is calculated at that point.” See Transcript as **Exhibit 4**.

15. Because Optotrafic's equipment does not produce photos which are primary evidence of a speeding violation of the Statute, that equipment does not comply with Maryland law and any citations issued using Optotrafic's equipment were issued in violation of Maryland law.

16. On information and belief and based upon Defendant's adopted FY 2012 Budget, citations issued by Defendant Riverdale Park in Fiscal Year 2011 ending June 30, 2011, resulted in revenue of at least \$1,866,666.68. As each paid citation increases revenues by \$40.00 it required approximately 46,667 paid citations for Defendant Riverdale Park, in fiscal Year 2011 alone, to take in revenue of \$1,866,666.68. See Budget excerpt as **Exhibit 5**.

17. Plaintiffs and those similarly situated, in their status as taxpayers, have suffered, and continue to suffer, pecuniary loss including, without limitation, improper sums illegally taken

from them by Defendant Riverdale Park, illegally taken from government coffers and paid by Defendant Riverdale Park to Optotraffic, which knew, through at least Angenette Criner, that non-law enforcement officers were authorizing citations, and by Defendant to its own employees in furtherance of Defendants' illegal issuance of citations under the Statute, as a result of the *ultra vires* contract between Defendant and Optotraffic and the ongoing administration of said *ultra vires* contract in violation of the Statute.

THE CLASSES

18. Prior to discovery and based upon the information now available, this Complaint defines the three classes (the "Classes") as follows:

- a. The "Not Signed by a Law Enforcement Officer Class" consists of all persons who have received or paid a citation issued by Defendant Riverdale Park which, on or after October 1, 2009, was authorized by an individual who was not a law enforcement officer;
- b. The "Not Signed by Officer Alford Class" consists of all persons who have received or paid a citation issued by Defendant Riverdale Park which, between February 17, 2010 and April 3, 2010, was not authorized by Cpl. Alford but was authorized under Cpl. Alford's log-in or otherwise was caused to bear his name on the issued citation; and
- c. The "Optotraffic Class" consists of all persons who received or paid a citation issued by Defendant Riverdale Park, since November 3, 2009, using Optotraffic equipment which did not comply with Maryland law.

CLASS ALLEGATIONS

19. The members of the Classes include over thousands of persons who together received approximately 46,667 citations that were not signed by a law enforcement officer, which were

not signed by Cpl. Alford although his name appeared on the citation swearing that a review of the images indicated a violation had occurred, or were not in compliance with Maryland law.

20. But for the existence of Defendant's speed monitoring system ("System"), its failure to have the statutorily-required equipment, and its failure to have the statutorily-required law enforcement officers review alleged violations of the Statute, the members of the Classes would not have received citations and/or paid fines to Defendant Riverdale Park. The cost of challenging a citation is prohibitive for an individual, and the penalties for non-payment, including impairment of vehicle registration, are likewise prohibitive. Thus, all persons who received and/or paid the citations have standing to sue as having been directly damaged or as taxpayers of Maryland who regularly use the roads in Riverdale Park.

21. (Numerosity) The members of each of the Classes are so numerous that it would be impractical to join them all as individual plaintiffs and to present their individual claims.

22. (Typicality) Plaintiffs' claims are typical of the claims of the Classes in that all of these claims are controlled by the same issue of law, i.e. whether the citations were legally authorized under the Statute, or were *ultra vires*. If the citations were illegally issued, a uniform legal result will apply to Plaintiffs and the Class members alike, voiding the citations. The Class Plaintiffs will fairly and adequately protect the interests of the Classes and have no interests in conflict with, or adverse to, those of the Class members.

23. (Commonality) Plaintiffs' claims, and the claims of the Class members, arise from common issues of fact and law, including the facts alleged herein and the issue of law recited herein and in the preceding paragraphs. Approval of citations as to each Class member is typical of the implementation as to each of the other members of that same Class, in all material respects.

24. (Risk of Inconsistency) This action is properly maintained as a class action under Maryland Rule 2-231(b)(1)(A) in that separate actions by the individual members of the Classes would create a risk of inconsistent or varying adjudications with respect to individual members of the Classes regarding Defendant's illegal implementation of the Statute.

25. (Dispositive of Others' Claims) This action is properly maintainable as a class action pursuant to Maryland Rule 2-231(b)(1)(B) in that separate actions by the individual members of the Classes would create a risk of adjudications with respect to the individual members of the Classes which would, as a practical matter, be dispositive of the interests of other members not party to this adjudication, or would substantially impair or impede their ability to protect themselves with regard to Defendant's illegal implementation of the Statute.

26. (Injunctive Relief) This action is properly maintained as a class action under Maryland Rule 2-231(b)(2) in that Defendant's illegal implementation of the Statute constitutes action on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief with respect to the entire Classes as sought in this action.

27. (Predominance) This action is properly maintained under Maryland Rule 2-231(b)(3), in that questions of law or fact, including Defendant's illegal implementation of the Statute, are common to all members of the Classes. These questions predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy between the Classes and Defendant.

28. (Incentives; Manageability; Adequacy of Representation) The commonality of issues of law and fact, as well as the relatively limited liability to each Class member, substantially diminishes the interest of members of the Classes in individually controlling the prosecution of separate actions. Many of the Class members are unaware of their rights to prosecute a claim

against Defendant Riverdale Park. This class action can be managed without undue difficulty because Defendants have databases containing the information necessary to identify the Class members, as well as the computer-based systems to create and implement notification of this action to the Class members, and to calculate damages.

29. (Conflicts; Adequacy of Legal Representation) Plaintiffs' counsel have the necessary experience, skill, resources, and abilities to provide adequate legal representation for the Classes.

Count I
Violation of Maryland Declaration of Rights

30. Plaintiffs hereby incorporate by reference the preceding paragraphs of this Complaint as if fully set forth herein.

31. Article 19 of the Maryland Declaration of Rights states: "That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land."

32. Article 24 of the Maryland Declaration of Rights states: "That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land."

33. Defendants issued citations which were not approved by a law enforcement officer as required by the Statute.

34. Defendants issued citations which were approved by civilian employees but falsely stated that they were approved by a law enforcement officer.

35. Defendants entered into contracts for the maintenance and operation of a System with equipment that violates the Statute.

36. As a direct result of the contracts entered into by Defendants, Defendants violated Plaintiffs' Constitutional rights as Maryland citizens pursuant to Articles 19 and 24 rights by injuring Plaintiffs in their person and property in contradiction to the Law of the Land and without due process.

37. Under Article 19 of the Maryland Declaration of Rights, Plaintiffs are entitled to access to the Courts of this state, free from unreasonable restrictions, to redress Defendants' infliction of injury to Plaintiffs' person and property.

38. As a result of Defendants' unconstitutional and illegal action, Plaintiffs and those similarly situated have suffered economic loss.

WHEREFORE, Plaintiffs David Embody and Stephanie McKissic, and those similarly situated, demand judgment against Defendant Town of Riverdale Park, Sigma Space Corporation, and Optotraffic, LLC for damages in the amount of Five Million Dollars (\$5,000,000.00) plus interest, costs, reasonable attorney fees, and such other relief as this Court deems appropriate.

Count II
Unjust Enrichment

39. Plaintiffs hereby incorporate by reference the preceding paragraphs of this Complaint as if fully set forth herein.

40. All proceeds from the citations issued to Class members by Defendants were collected in direct violation of the Statute.

41. The proceeds from the citations conferred a financial benefit upon Defendants. In accepting fines and penalties resulting from the issuance of illegal citations, Defendants were aware of, and had knowledge of, the benefits conferred upon them by Plaintiffs, and those similarly situated.

42. Defendants' acceptance and retention of the proceeds from the citations illegally issued in violation of the Statute makes it inequitable for Defendants to retain the proceeds.

43. Plaintiffs were damaged and Defendants were unjustly enriched as a direct result of Defendants' illegal implementation of the Statute.

WHEREFORE, Plaintiffs David Embody and Stephanie McKissic, and those similarly situated, demand judgment against Defendant Town of Riverdale Park, Sigma Space Corporation, and Optotraffic, LLC for damages in the amount of Five Million Dollars (\$5,000,000.00) plus interest, costs, reasonable attorney fees, and such other relief as this Court deems appropriate.

Count III **Conversion**

44. Plaintiffs hereby incorporate by reference the preceding paragraphs of this Complaint as if fully set forth herein.

45. In collecting money from Plaintiffs and those similarly situated through illegally citations, Defendants wrongfully, intentionally and without permission took the personal property of Plaintiffs and those similarly situated.

46. In taking the personal property of Plaintiffs and those similarly situated, Defendants exercised dominion over said personal property.

47. Despite Defendants' taking of the personal property of Plaintiffs and those similarly situated, Plaintiffs and those similarly situated were at all times entitled to immediate possession of the personal property.

48. In taking the personal property of Plaintiffs and those similarly situated, harm was done to the personal property in that Plaintiffs and those similarly situated were unable to use the personal property as they saw fit, but instead were forced to pay it to Defendants in the form of illegal fines.

WHEREFORE, Plaintiffs David Embody and Stephanie McKissic, and those similarly situated, demand judgment against Defendant Town of Riverdale Park, Sigma Space Corporation, and Optotraffic, LLC for damages in the amount of Five Million Dollars (\$5,000,000.00) plus interest, costs, reasonable attorney fees, and such other relief as this Court deems appropriate.

Count IV
Constructive Trust

49. Plaintiffs hereby incorporate by reference the preceding paragraphs of this Complaint as if fully set forth herein.

50. By collecting fines from the citations illegally issued to Plaintiffs, and those similarly situated, Defendants converted the personal property of Plaintiffs, and those similarly situated, to its own use and Plaintiffs have a good equitable claim to their personal property.

51. A confidential and fiduciary relationship, based upon trust and confidence, existed between Defendants and Plaintiffs, and those similarly situated, based upon Defendant Riverdale Park, and its agents', governing authority over the public roads upon which Plaintiffs, and those similarly situated, drove.

52. Defendants have been unjustly enriched by its actions and under the circumstances it would be inequitable for Defendants, the dominant parties in the relationship, to retain title to the personal property or retain any beneficial interest in the personal property. Under these circumstances, a constructive trust should be imposed on Defendants for the benefit of Plaintiffs.

WHEREFORE, Plaintiffs David Embody and Stephanie McKissic, and those similarly situated, demand judgment against Defendant Town of Riverdale Park, Sigma Space Corporation, and Optotraffic, LLC for damages in the amount of Five Million Dollars (\$5,000,000.00) plus interest, costs, reasonable attorney fees, and such other relief as this Court deems appropriate.

Count V
Breach of Fiduciary Duty

53. Plaintiffs hereby incorporate by reference the preceding paragraphs of this Complaint as if fully set forth herein.

54. Defendant Riverdale Park is an entity designed to work for the best interests of all persons within their territories. As such, Defendant Riverdale Park, and its agents, have a legal fiduciary duty toward Plaintiffs and those similarly situated, not to engage intentionally in illegal contractual relationships, or illegally issue citations, resulting in the illegal taking of personal property.

55. Defendants breached their fiduciary duty with Plaintiffs and those similarly situated, by illegally issuing citations and by entering into illegal contracts that Defendants knew or reasonably should have known would result in the illegal taking of personal property.

WHEREFORE, Plaintiffs David Embody and Stephanie McKissic, and those similarly situated, demand judgment against Defendant Town of Riverdale Park, Sigma Space Corporation, and Optotraffic, LLC for damages in the amount of Five Million Dollars (\$5,000,000.00) plus interest, costs, reasonable attorney fees, and such other relief as this Court deems appropriate.

Count VI
Fraud - Constructive Fraud

56. Plaintiffs hereby incorporate by reference the preceding paragraphs of this Complaint as if fully set forth herein.

57. Defendant Riverdale Park is an entity designed to work for the best interests of all persons within its territory. As such, Defendant Riverdale Park, and its agents, owed fiduciary duties toward Plaintiffs and those similarly situated, not to engage intentionally in contractual relationships resulting in the illegal taking of personal property.

58. Defendants breached their fiduciary duty with Plaintiffs and those similarly situated, by issuing illegal citations and by entering into illegal contracts that Defendants knew or reasonably should have known would result in the illegal taking of personal property.

59. Defendants breached their fiduciary duties intentionally, with malice, and/or reckless disregard for the rights of Plaintiffs and those similarly situated; by entering into the contracts that used equipment illegal under the Statute, by issuing citations not approved by a law enforcement officer, and by issuing citations that falsely indicated that they had been approved by a law enforcement officer.

60. Defendants defrauded Plaintiffs and the Class Members by issuing citations falsely indicating that they had been authorized by a law enforcement officer and by entering into the contracts that used equipment illegal under the Statute.

61. Plaintiffs reasonably relied upon the representations of Defendants, a government entity and its agents, with fiduciary duties to Plaintiffs and Maryland citizens in general, that the citations were legally issued.

62. A direct result of Defendants' fraud and/or constructive fraud, Plaintiffs suffered damages.

WHEREFORE, Plaintiffs David Embody and Stephanie McKissic, and those similarly situated, demand judgment against Defendant Town of Riverdale Park, Sigma Space Corporation, and Optotraffic, LLC for damages in the amount of Five Million Dollars (\$5,000,000.00) plus interest, costs, reasonable attorney fees, and such other relief as this Court deems appropriate.

Count VII
Temporary Restraining Order and
Preliminary and Permanent Injunctive Relief – Maryland Rule 15-501 et seq.

63. Plaintiffs hereby incorporate by reference the preceding paragraphs of this Complaint as if fully set forth herein.

64. Defendant Riverdale Park continues to use Optotraffic's equipment that does not comply with the Statute's requirements that the photos taken by the System be evidence of a speeding violation of the Statute. On information and belief Defendants continue to use civilians to authorize speed camera citations.

65. There exists a strong likelihood that Plaintiffs and those similarly situated will succeed on the merits of their claim.

66. Unless Defendants are restrained by this Court from continuing to operate Optotraffic's speed cameras, Plaintiffs and those similarly situated will suffer immediate, substantial and irreparable injury.

67. The benefits to Plaintiffs and those similarly situated are equal to or outweigh the potential harm that Defendants would incur if this Court grants the requested injunctive relief.

68. The public interest is best served by granting the injunction.

69. The requirements of the Maryland Rules for injunctive relief, including Rule 15-501 et seq., have been met.

WHEREFORE, Plaintiffs David Embody and Stephanie McKissic, and those similarly situated, request:

- a. That this Court issue a temporary restraining order restraining and enjoining Defendants from using the System and from issuing citations until the legality of the system, has been adjudicated;
- b. That this Court issue a preliminary injunction restraining and enjoining Defendants from using the System and from issuing citations until the legality of the System has been adjudicated;

c. That this Court issue a permanent injunction restraining and enjoining Defendants from using the System and from issuing citations until the legality of the System has been adjudicated; and

d. That this Court order an award of costs, attorney's fees, and such other and further relief as this Court may deem just and proper.

Count VIII
Declaratory Relief

70. Plaintiffs hereby incorporate by reference the preceding paragraphs of this Complaint as if fully set forth herein.

71. Plaintiffs seek a declaration pursuant to Md. Code Ann. *Courts and Judicial Proceedings* § 3-401, et seq. that Defendants contract, including as amended, was *ultra vires* and void ab initio, and that all sums extracted from Class members should be refunded in full, with all interest due, and seek such further relief as may be appropriate.

WHEREFORE, Plaintiffs David Embody and Stephanie McKissic, and those similarly situated, request:

a. That this Court determine and adjudicate the rights and liabilities of the parties under the Statute, the speed monitoring system that has been implemented in Defendant Riverdale Park's jurisdiction, and all citations issued through the System; and declare that the Optotraffic equipment does not comply with the Statute;

b. That this Court determine and adjudicate the rights and liabilities of the parties under the Statute, the speed monitoring System that has been implemented in Defendant Riverdale Park's jurisdiction, and all citations issued through the System; and declare that the citations approved by individuals who were not law enforcement officers did not comply with the Statute;

- c. That this Court find and declare that Defendants' contract and all amendments thereto regarding the System were *ultra vires* and void *ab initio*;
- d. That all sums extracted from Plaintiffs and Class Members shall be refunded in full, with interest;
- e. That this Court award Plaintiff supplemental relief pursuant to Md. Code Ann. *Courts and Judicial Proceedings* § 3-401, et seq., including reasonable costs and attorney fees; and
- f. That this Court award Plaintiffs and the Class members such other and further relief as may be appropriate in law or equity.

Count XI
Civil Conspiracy

72. Plaintiffs hereby incorporate by reference the preceding paragraphs of this Complaint as if fully set forth herein.

73. Defendants met, conferred and communicated with each other on a continuing basis prior to and during their implementation and operation of the System with equipment that did not comply with the Statute.

74. In collectively creating and participating in the System, including the overt acts of entering into the Contract with equipment that did not comply with the Statute and allowing citations to be authorized by non-law enforcement officers, Defendants constructed a confederation by agreement or understanding to conduct acts that were in violation of the Statute.

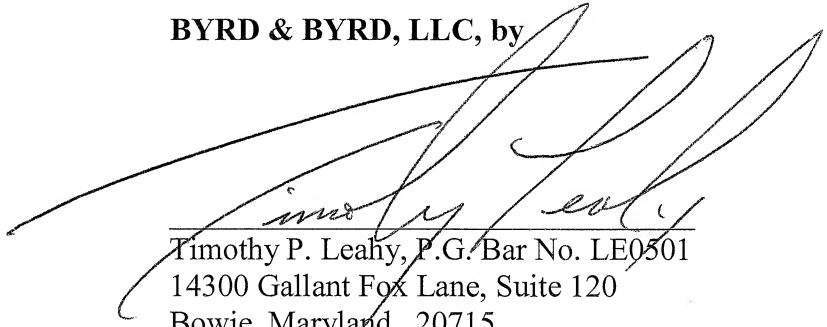
75. Defendants' illegal implementation of the Statute was undertaken in furtherance of the conspiracy.

76. As a result of the conspiracy, Plaintiffs have suffered actual legal damage by Defendants' illegal taking of Plaintiffs' personal property.

WHEREFORE, Plaintiffs David Embody and Stephanie McKissic, and those similarly situated, demand judgment against Defendants Town of Riverdale Park, Sigma Space Corporation, and Optotraffic, LLC for damages in the amount of Five Million Dollars (\$5,000,000.00) plus interest, costs, reasonable attorney fees, and such other relief as this Court deems appropriate.

Respectfully submitted,

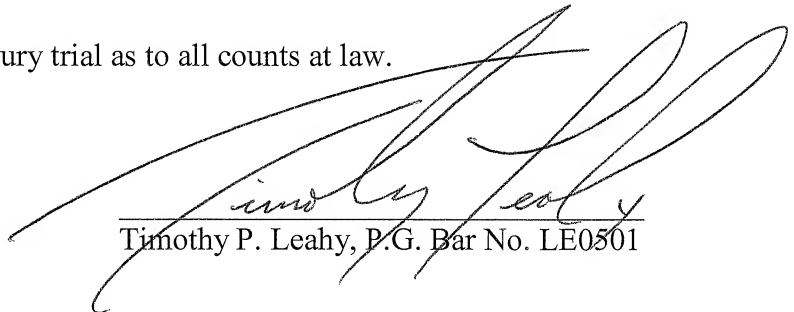
BYRD & BYRD, LLC, by



Timothy P. Leahy, P.G. Bar No. LE0501
14300 Gallant Fox Lane, Suite 120
Bowie, Maryland 20715
(301) 464-7448
(301) 805-5178 Fax
tleahy@byrdandbyrd.com
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial as to all counts at law.



Timothy P. Leahy, P.G. Bar No. LE0501

Exhibit 1

From: "Tracey Perrin" <tperrin@riverdaleparkmd.gov>
To: "Clay Alford" <calford@riverdaleparkmd.gov>
Sent: Thursday, May 20, 2010 7:55 AM
Subject: Re: Speed Citations

Yes, that was a lot! I'm glad you're on board because before it was just the two of us. Plus I really want comp, so this works out great. I just told Karen that we are using the 6 1/2 hours. Hell that's a lot to do from home especially after you've worked all day. And my hand and arm were killing me last night.

----- Original Message -----

From: Clay Alford
To: 'Tracey Perrin'
Sent: Thursday, May 20, 2010 8:30 AM
Subject: RE: Speed Citations

Tracey it was all done when I went to bed last night. If a lot more come in let e know and I will start again. That was a lot of violations and I think I lost some eye sight

From: Tracey Perrin [mailto:tperrin@riverdaleparkmd.gov]
Sent: Wednesday, May 19, 2010 4:24 PM
To: Clay Alford
Subject: Re: Speed Citations

I talked to her today and the 3 of us have approval for either overtime or comp, whichever we choose. So you're all good!

----- Original Message -----

From: Clay Alford
To: 'Tracey Perrin'
Cc: ptimmons@riverdaleparkmd.gov
Sent: Wednesday, May 19, 2010 4:06 PM
Subject: RE: Speed Citations

Tracey I am off the next two days until Friday night. I have asked to Chief if I can out in for comp or overtime for doing this on my days off. I have approved over 1000 of them during my days off. I have no problem doing it but I want to be compensated some way. The Chief sent the request to Capt Timmons and once I get his approval I will knock them out.

From: Tracey Perrin [mailto:tperrin@riverdaleparkmd.gov]
Sent: Wednesday, May 19, 2010 3:43 PM
To: calford@riverdaleparkmd.gov
Subject: Speed Citations

Clay,

There are 2900 citations in there today. So Karen and I are going to work from home tonight because we had to get reports out today plus her Internet was down. We all will take 1000 and clear them out. So when you can please try to get 900 out so we can start from scratch tomorrow.

Thanks
Tracey

Exhibit 2



Riverdale Park Police Department Speed Monitoring System

CITATION

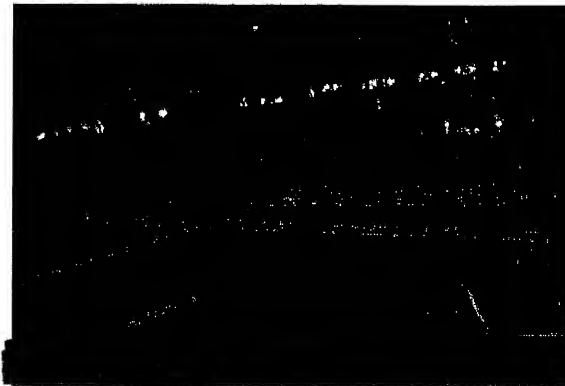
- ☐ 21-809 IHE Zone (P.G. County only)
☐ 21-810 Work Zone
☒ 21-809 School Zone

Please take notice that the vehicle described and pictured herein did exceed the maximum posted speed limit at the place, date, and time specified. Therefore, under Maryland State Law TA 21-809, as the registered owner(s) or lessee (six months or more) you are liable for the violation. Unless you elect to go to court, a civil penalty in the amount of \$40.00 must be paid by the due date shown on this notice.

PAYMENT OF THE PENALTY AMOUNT FOR THE VIOLATION IS AN ADMISSION OF LIABILITY, HOWEVER IT WILL NOT RESULT IN POINTS AND CANNOT BE USED TO INCREASE YOUR INSURANCE RATES.

WARNING: FAILURE TO PAY THE PENALTY SHOWN, OR TO CONTEST LIABILITY DESCRIBED IN THE NEXT PARAGRAPH MAY RESULT IN THE REFUSAL OR SUSPENSION OF THE MOTOR VEHICLE REGISTRATION.

If you wish to contest this citation, your request for a court date must be received at least five days prior to the payment due date shown below. If you appear in court, the maximum amount you can be charged is \$40 fine and court costs. Recorded images are evidence of a violation of the Maryland Law prohibiting exceeding maximum posted speed limit.



CERTIFICATE:

I am an agent or employee of Riverdale Park Police Department. Based on inspection of the recorded images shown above, the motor vehicle was operated in violation of TA 21-809, as evidenced by the above images. Sworn to or Affirmed By:

PFC Alford, ID #100

PFC C. Alford #100

DATE AND TIME OF VIOLATION: Feb 17, 2011 06:16:26 AM
LOCATION: MD-410 WB at Taylor Road
Riverdale Park MD
VEHICLE TAG: [REDACTED] MEASURED SPEED: 47
AMOUNT DUE: \$40.00 DATE DUE: March 19, 2011
VIOLATION #: 8310388151 POSTED SPEED: 35

Scissors icon Detach here

FRONT

COUPON MUST ACCOMPANY PAYMENT



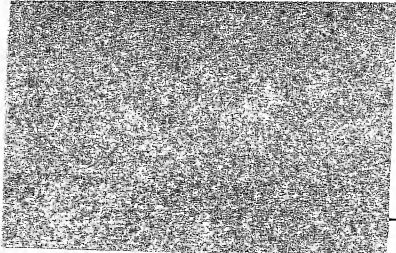
RIVERDALE PARK POLICE DEPARTMENT
PO BOX 806
LANHAM MD 20703

FORWARDING SERVICE REQUESTED
[REDACTED]
[REDACTED]

INSTRUCTIONS

- 1. TO MAKE CORRECTIONS:** Make any corrections to your name and address on the other side of this form.
- 2. TO PAY THE CITATION:** Send check, money order, or pay with a credit card. See the other side of this form for payment instructions.
- 3. TO REQUEST A COURT HEARING:** Do not send payment if you are requesting a court date. Check the box on the other side of this form and return it at least 5 days prior to the Due Date of March 19, 2011 (no later than March 14, 2011). You will be notified by mail of the court date, time, and location.

Exhibit 3



From: "Tracey Perrin" <tperrin@riverdaleparkmd.gov>
To: <anjenette.criner@optotraffic.com>
Cc: <kcoker@riverdaleparkmd.gov>; <ptimmons@riverdaleparkmd.gov>;
<calford@riverdaleparkmd.gov>
Sent: Monday, January 10, 2011 9:41 AM
Subject: Day 14 approvals
Anjie,

Karen and I cleared out the approvals in queue over the weekend. This morning we had a few Maryland tags on day 14. Want to make you aware so that changes can be made on your end.

Thanks
Tracey



Exhibit 4

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

STATE OF MARYLAND,

Plaintiff,

vs.

Civil Action Law 11-27440

EASTOVER AUTO SUPPLY,

through 11-27449

Defendant.

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

(De Novo Hearing)

(Excerpts)

Upper Marlboro, Maryland

Friday, January 27, 2012

BEFORE:

HONORABLE ALBERT W. NORTHROP, Associate Judge

APPEARANCES:

For the Plaintiff:

GEORGIA MILTENBERGER

For the Defendant:

TIMOTHY LEAHY, ESQUIRE

Cindy S. Davis, RPR
Official Court Reporter
Post Office Box 401
Upper Marlboro, Maryland 20773

1 It was manufactured by Stanley. It's a hundred-foot tape
2 measure.

3 THE COURT: Okay. Anything else? Any other
4 witnesses?

5 MR. LEAHY: No more witnesses, Your Honor.

6 THE COURT: Do you wish to rebut?

7 MS. MILTENBERGER: Yes, Your Honor. I would like
8 him to testify on behalf of the measurements and the speed.

9 **JOHN O'CONNOR,**

10 a witness produced on call of the Plaintiff, having
11 previously been duly sworn, was examined and testified
12 further as follows:

13 THE COURT: Okay. Mr. O'Connor, you're still under
14 oath. We need to see who is at that microphone. So start
15 with your name.

16 THE WITNESS: John O'Connor.

17 THE COURT: Okay.

18 THE WITNESS: As it relates to the photos, Your
19 Honor, I'm a certified accident reconstructionist,
20 radar/LIDAR instructor, certified by the Maryland Police
21 Training Commission as an expert in this field; been teaching
22 for close to 12 years; certified over 3,500 officers.

23 As an accident reconstructionist, we do not use
24 photos that are taken at two independent times to estimate
25 speed. Why? Because it's inaccurate. You can't do it. I

1 would never use it in a court to go ahead and bring them up
2 to -- especially for, let's even say this was a vehicular
3 manslaughter case. The defense would tear it apart.

4 The measurements that Mr. Foreman was referencing
5 were taken with, he says, a Stanley tape measure. As a
6 matter of fact, this law enforcement has their measuring
7 devices, whether it's measuring wheel, measuring tape,
8 measuring rope, regardless of what it is, certified and
9 calibrated against the known and unknown distance. This way,
10 when it's presented in court, the Court has evidence that it
11 is true and within tolerance.

12 We don't know that the tape measure that
13 Mr. Foreman was using was even calibrated. There's nobody
14 else that's doing it.

15 MR. LEAHY: Objection. Is the witness giving some
16 sort of narrative? There's no question pending.

17 THE COURT: Well, how is it that the camera
18 calculates the speed?

19 THE WITNESS: The camera doesn't calculate the
20 speed, Your Honor. The photo is actually just secondary
21 evidence that the vehicle was there and it was in motion,
22 that it was there at the time of the occurrence. The speed
23 is actually done by time distance by one LIDAR device that
24 has two beams that's pointed down at the road. The speed of
25 the vehicle is calculated at that point.

1 So what happens after that is negligible. The
2 driver could have slammed on the brakes, the driver could
3 have put it into first and slowed the vehicle down, and the
4 driver could have switched lanes. So there's many numerous
5 amount of actions that could have occurred afterwards to --
6 if you want to use those photos -- to show that there's a
7 difference in speed, if that's the way you want to go.

8 Also, in reference to the measuring of the speed --

9 MR. LEAHY: Objection. Your Honor, I think the
10 reason that I would object at this point is that the statute
11 clearly lays out that the violation is supposed to be based
12 on a review of the photographic images. I mean, reading from
13 the statute, evidence, "a certificate alleging that the
14 violation occurred, sworn to or affirmed by an agent or
15 employee of an agency, based on inspection of recorded images
16 produced by a speed monitoring system."

17 What Mr. O'Connor has just said is that you can't
18 use the photos. He just said you cannot use the photos;
19 they're inaccurate. The statute requires that the evidence
20 in this case be based on the photos, and now he's trying to
21 say we're throwing out the statute; we're using something
22 completely different, and I haven't seen any kind of
23 certification on the LIDAR. So none of it is relevant.

24 At this point, I don't see any reason to continue.
25 The evidence is already damning enough and the case ought to

REPORTER'S CERTIFICATE

I, Cindy S. Davis, an Official Court Reporter for the Circuit Court for Prince George's County, Maryland, do hereby certify that I stenographically recorded the proceedings in State of Maryland versus Eastover Auto Supply, civil action law 11-27440 through 11-27449, on January 27, 2012, before the Honorable Albert W. Northrop, Associate Judge.

I further certify that the page numbers 1 through 16 constitute an official transcript of excerpts of the proceedings as transcribed by me from my stenographic notes to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have affixed my signature this 15th day of February, 2012.

Cindy S. Davis, RPR

Official Court Reporter

Exhibit 5

Town of Riverdale Park

Total Departments Finance Committee Proposed Expenditures and Revenues FY 12

<i>Department</i>	<i>Adopted FY 11</i>	<i>Mayor's Proposed FY 12</i>	<i>Finance Approved Expenses FY 12</i>
1. General Government	690,479.06	688,447.09	693,847.09
2. Police	2,647,946.27	2,880,954.41	2,912,954.41
3. Public Works	1,213,992.11	1,291,816.74	1,309,759.74
5. Recreation	17,075.00	20,075.00	20,075.00
6. Economic Development Promotion	50,253.17	50,253.17	50,253.17
7. Miscellaneous	13,000.00	53,000.00	54,500.00
8. Revenues to replenish Operating Reserves	126,906.96	0.00	0.00
9. FY 12 Transfer to CIP Fund	60,000.00	1,051,126.47	999,283.47
TOTAL:	4,819,652.56	6,035,672.88	6,040,672.88

Variance between Expenses & Revenues

-	(0.00)	-
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Revenue	4,819,652.56	6,035,672.88	6,040,672.88
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REVENUES FY 12

Budget #	Description	Present FY 11	Revenue thru 03/31/11	Revenue through 06/30/11	Mayor's Proposed Revenue FY 12	Finance Proposed Expenses FY 12
	<i>Appropriated Surplus</i>	-	-	-	469,756.00	\$ 469,756.00
1	<i>Real Est. Taxes & Interest</i>	3,198,548.56	3,339,120.45	3,289,750.00	3,426,206.88	3,426,206.88
1.01	<i>Oper. Property Tax</i>	125,000.00	114,791.40	125,000.00	125,000.00	125,000.00
1.49	<i>Tangible Property Tax</i>	294,000.00	269,062.68	294,000.00	294,000.00	294,000.00
1.56	<i>Gas Tax & Motor Vehicle Licenses (Highway User)</i>	6,053.00	25,048.06	25,048.06	20,000.00	20,000.00
2.23	<i>Town Business Licenses</i>	23,600.00	23,350.00	23,600.00	23,000.00	23,000.00
3.3	<i>State Police Aid</i>	55,281.00	88,138.50	58,759.00	58,000.00	58,000.00
3.501	<i>Financial Corp.</i>	11,000.00	-	11,000.00	11,000.00	11,000.00
3.5092	<i>Disposal Fee Rebate</i>	17,000.00	8,668.00	17,336.00	17,000.00	17,000.00
3.601	<i>Town Share Income Tax</i>	374,360.00	249,104.00	332,138.67	353,000.00	353,000.00
5.02	<i>Special Clean Up</i>	2,300.00	5,050.00	5,050.00	2,500.00	2,500.00
5.1	<i>Fines & Forfeitures</i>	100,000.00	107,815.05	143,753.40	100,000.00	100,000.00
6.1	<i>Interest Income</i>	2,400.00	0.25	0.25	-	-
6.9	<i>Miscellaneous</i>	50,000.00	77,950.71	103,934.28	50,000.00	50,000.00
6.91	<i>Red Light Cameras</i>	-	884.32	472.50	-	-
6.92	<i>Speed Cameras*</i>	317,200.00	1,410,190.08	1,866,666.68	848,000.00	848,000.00
6.93	<i>Grant Funding</i>	65,510.00	-	-	65,510.00	65,510.00
6.99	<i>Rental Inspection</i>	11,000.00	14,100.00	18,800.00	12,800.00	12,800.00
7	<i>Apartment/Rooming House Inspections</i>	93,900.00	88,940.00	97,140.00	93,900.00	93,900.00
8	<i>CATV Comcast/Verizon</i>	45,000.00	48,574.76	64,766.35	40,000.00	45,000.00
8.05	<i>Alarm Registration</i>	7,500.00	-	7,500.00	6,000.00	6,000.00
10	<i>Contribution from ACP</i>	20,000.00	-	20,000.00	20,000.00	20,000.00
	TOTAL	4,819,652.56	5,870,788.26	6,504,715.18	6,035,672.88	6,040,672.88

*FY 11 speed camera revenue includes an amount that must be returned to the State of Maryland, per State law

Real Estate @ .581 per \$100 of assessed valuation.

Tangibles and Operating Rates @ \$2.00 per \$100 of assessed valuation by the State of Maryland.

FY 12 Assessable Base subject to Constant Yield evaluation